

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1180 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ASAD-UZ-ZAMAN IBRAHIM SHAIKH

Versus

NURUNNISA WD/O MOHMEDMIYA

Appearance:

MR KG PANDIT for Petitioner
MS VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/07/2000

ORAL JUDGEMENT

1. This appeal has long drawn history of
litigations. However, it would not be necessary to enter
into the same as the appeal is directed against impugned
order dated 20/8/1976, 7/9/1976 below Darkhast (execution

application) exh. 1 and application exh. 130 in Darkhast No. 39 of 1961 as also order dated 17/8/1976 below application for amendment exh. 160. All these orders have been passed by the learned City Civil Judge, Court No. 11, City Civil Court, Ahmedabad in the aforesaid Execution Application No. 39/1961.

2. Referring to the memo of appeal, it would appear that the appellant originally filed Civil Suit No. 875 of 1935 which was decided on 16/2/1939. Subsequently the appellant filed Execution Application No. 824 of 1954, which was dismissed on 9/9/1959. Thereafter, Appeal No. 548 of 1959 was filed before the District Court and that was allowed by order dated 2/9/1960. Darkhast was remanded for re-trial. A Second Appeal No. 1585 of 1960 was filed and that was decided on 4/3/1966. Letters Patent Appeal No. 96 of 1966 was filed and that was decided on 19-20/8/1971. Leave to appeal before the Hon'ble Supreme Court against the said decision was revoked on 22/2/1972. That is how the original Execution Application No. 824 of 1954 proceeded further and the same was given Execution Application No. 39 of 1961 upon the formation of City Civil Court at Ahmedabad. That was decided on merits by order dated 16/8/1972 by the learned City Civil Judge, Court no.5. That decision was challenged in First Appeal No. 392 of 1972 filed by judgment debtor no.5 and that appeal was decided on 1/1/1973.

As the judgment debtor no. 5 did not comply with the order, a Commissioner was appointed to carry out directions of the Court. The Commissioner accordingly carried out the directions of the Court. At that time it was found that there was a wooden partition which existed at a particular place as shown in the map attached to the decree. Removal of this partition was not visible when the original prayer was made, since the same was covered by the ground glasses on the lattice on the southern wall of the property. Hence, appellant filed Application Exh. 130 and 160 dated 18/6/1973 and 19/4/1975 respectively to amend the original prayer in the application. By the impugned orders the trial Court did not grant the amendment application and did not also grant further execution arising from such amendment. The appellant also felt aggrieved with the ultimate order of cost passed by the trial Court.

3. When this matter came up for final hearing Mr. K.G. Pandit, learned advocate appearing for the appellant went through the papers in his brief, but he was not able to point out any direction in the concerned

decree with regard to partition in question. If that is so, the grievance of the appellant in the grounds of the memo of appeal that the trial Court ought to have granted amendment with regard to wooden partition cannot be accepted in as much as the learned trial Judge has rightly not gone behind the concerned decree. It is not in dispute that the executing Court accepted the prayers in the Darkhast and saw to the decree being executed by appointment of Commissioner. This is apparent from the detailed order passed by the trial Court. What was left out was amendment application exh. 160 and the prayer in that respect contained in exh. 130. The trial Court finding that there was no such provision in the decree with regard to the wooden partition wall, the trial Court could not show any indulgence by granting the amendment application and further executing the same. On reference being made to the memo of appeal, it has also appeared that the appellant could not set-out the prayer with regard to the wooden partition initially because that was covered by lattice/Jali with glasses.

4. When asked about the present position Mr. Pandit, learned advocate for the appellant fairly submitted that he did not have any communication or cooperation from the appellant inspite of the fact that he had written to the appellant about listing of this appeal number of times and inspite of the fact that he sent his Clerk to the appellant quite recently. Be that it may, it does not appear from the record that the trial Court refused to grant amendment which was relevant or which pertained to any clause in the decree sought to be executed and left out to be executed.

5. In the above view of the matter, no indulgence can be shown in this appeal. The same is hereby dismissed with no order as to cost.

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PVR.